

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.303 of 2016

SHRI RAMKRISHNA JANARDAN BHAT alias
SHRI RAMKRISHNA JANARDAN PINGE,
Son of late Shri Janardan Bhat alias Pinge
Aged 62 years, married, Landlord,
Resident of H. No.797, Xeli, Loliem,
Taluka Canacona, Goa.

..... Petitioner/
Orig. Appellant

V/s

1. M/S. GOLD RESORTS AND HOTELS PVT. LTD.,
(now changed to EXPERION HOSPITALITY
PVT. LTD.), a registered Company
having its office at F-9, First Floor,
Manish Plaza 1, Plot No.7, MLU,
Sector 10, Dwarka, New Delhi – 110 075,
represented by its Vice President –
Legal and Authorized Signatory
Shri. Harsh Vibhore Singhal,
son of late K. R. Singhal,
aged about 55 years,
r/o. F-8/15, FF Vasant Vihar,
New Delhi, 110057.
2. SHRI. JANU GAONKAR,
(Since deceased) represented through
Legal Representatives,
 - 2(a) SMT. HEMALATA GOVIND VELIP,
Grand daughter of late Janu Gaunkar,
Major of age and her husband
 - 2(b) SHRI. GOVIND VELIP,
Major of age,
 - 2(c) MISS. SHASHIKALA KRISHNA VELIP,
Grand daughter of late Janu Gaunkar
Major of age,
 - 2(d) SHRI. PRASHANT KRISHNA VELIP,
Grand son of late Janu Gaunkar
Major of age,

- 2(e) SHRI SANJAY KRISHNA VELIP,
Grand son of late Janu Gaunkar
Major of age,
All residents of H.No. 755/1,
Mahalwada, Poinguinim, Canacona, Goa.
- 2(f) SMT. TANUJA KRISHNA VELIP,
Second wife of son-in-law of late Janu Gaunkar,
Major of age,
- 2(g) SHRI.SOMESH KRISHNA VELIP,
Grand-son of late Janu Gaunkar,
Major of age,
Both residents of H. No. 755/1,
Mahalwada, Poinguinim, Canacona, Goa.
- 3. SHRI. LAXMAN RAMA GAUNKAR,
(Since deceased) represented through
Legal Representatives,
- 3(a) SMT. PRACHI PREMANAND RAMA GAUNKAR,
Daughter-in-law of late Laxman Rama Gaunkar
Major of age,
- 3(b) KUM. HARSHADA HARISHCHANDRA GAUNKAR,
Grand daughter of late Laxman Rama Gaunkar
Major of age,
Both residents of Tanshi, Loliem,
Canacona Goa.
- 4. SHRI. YESSO RAMA GAONKAR,
(Since deceased) represented through
Respondent No.14 and Respondent No.45
- 5. SHRI SEBASTIAO DAVID COLACO,
alias VALENTINO COLACO (since deceased)
represented through Legal Representatives,
- 5(a) SMT. PEDRINA COLACO,
Wife of late Sebastiao David Colaco,
Major of age,
- 5(b) SHRI. SAVIO VALENTINO COLACO,
S/o.Late. Sebastiao David Colaco,
Major in age,

- 5(c) SMT. ELSA ROMANA COLACO,
Daughter-in-law of late. Sebastiao David Colaco,
Major in age,
All residents of H. No. 890 not known,
Shelli, Loliem, Taluka, Canacona Goa.
- 6. JOAO JERONIO COLACO,
(Since deceased) represented through
Legal Representatives,
- 6(a) SMT. QUEROBINA D'SOUZA,
Daughter of late Joao J. Colaco,
Major of age, and her husband
- 6(b) SHRI GLORIO D'SOUZA,
Major of age,
Both residents of Agas, Loliem,
Canacona Goa.
- 6(c) SMT. JULIANA REBELLO,
Daughter of late Joao J. Colaco,
Major of age, and her husband
- 6(d) SHRI AVELINO REBELLO,
Major of age,
Both residents of Muthal,
Sadolxem, Poinguinim, Canacona, Goa.
- 7. SHRI. AGOSTINHO COLACO,
(Since deceased) represented through
Legal Representatives,
- 7(a) MRS. JEFFE COLACO,
Daughter of late Agostinho Colaco
- 7(b) MR. SANTAN D'SOUZA,
Son -in- law of late Agostinho Colaco
Both residents of House No. 1197,
Maxem, Loliem, Canacona, Goa.
- 7(c) MR. CONSTANTINO COLACO,
Son of late Agostinho Colaco
- 7(d) MRS. MARY D'SOUZA E COLACO,
Daughter - in -law of late Agostinho Colaco
- 7(e) MR. RAMSON COLACO,
Son of late Agostinho Colaco

- 7(f) MRS. KRUPA HALDANKAR,
Daughter –in-law of late Agostinho Colaco
All residents of H. No. 1443,
Polem, Loliem, Canacona, Goa.
- 7(g) MRS. QUEROBINA COLACO,
Daughter of late Agostinho Colaco
- 7(h) MR. ESTILITO D'SOUZA,
Son – in – law of late Agostinho Colaco
Both residents of Agas, Loliem,
Canacona, Goa.
8. COMUNIDADE OF LOLIEM,
represented through its Attorney;
having office at Chaudi, Canacona, Goa.
9. SMT. MINGUELINA D'SOUZA,
major of age, housewife,
resident of H.No. not known,
near Bridge at Tamnem, P. O. Poinguinim,
Taluka Canacona, Goa.
10. SHRI. RAMA LAXMAN GAONKAR,
Major of age, r/o Tanshi, Loliem,
Canacona, Goa.
11. EXECUTIVE ENGINEER WDXV
P.W.D. Fatorda, Margao.
12. QUEIRO MALUDEKAR,
major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
13. SHRI. JANU SHAB GAUNKAR,
major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
14. SHRI. RAMA YSSU GAUNKAR,
major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
15. SHRI. MANOHAR NAGU VELIP,
major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
16. SHRI. JANU VITHOBA GAUNKAR,

(Since deceased) represented through
Respondent Nos.47, 48 and 49

17. SHRI. JIBALO LAXIMAN GAUNKAR,
major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
18. SHRI. BABAY NAGU GAONKAR,
(Since deceased) represented through
Respondent Nos.71, 72, 73 and 74.
19. SHRI JAIWANT GOVIND GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
20. SHRI. GANESH RAMA GAONKAR,
(Since deceased) represented through
Legal Representatives,
- 20(a) SHRI. SURESH DHEKAR,
Son-in-law of late Ganesh Rama Gaonkar,
Major of age, resident of
Amona, Poinguinim, Goa.
- 20(b) SMT. JYOTI PANDU VELIP,
Daughter of late Ganesh Rama Gaonkar
Major of age and her husband
- 20(c) SHRI. PANDU VELIP,
Major of age
Both residents of Bhupar, Gaondungrem,
Canacona, Goa
- 20(d) SMT. NILIMA HANUMANT MADKAIKAR,
Daughter of late Ganesh Rama Gaonkar,
Major of age and her husband,
- 20(e) SHRI. HANUMANT MADKAIKAR
Major of age,
Both residents of Madkai, Ponda, Goa.
- 20(f) SMT. JAYANTI SHANTARAM VELIP,
Daughter of late Ganesh Rama Gaonkar,
Major of age and her husband,
- 20(g) SHRI SHANTARAM VELIP,
Major of age,

Both residents of Vaddem, Netravali,
Sanguem, Goa.

20(h) SHRI RATNAKAR GANESH GAONKAR,
Son of late Ganesh Gaonkar,
Major of age,

20(i) SMT. ROSHAN RATNAKAR GAONKAR,
Major of age,
Both residents of Loliem,
Canacona, Goa.

20(j) CHETALI GHANASHYAM MADKAIKAR,
Grand daughter of Late Ganesh Gaonkar,
Major of age,
Resident of Madkai, Goa.

21. SHRI. RAMA SHABU GAUNKAR,
(Since deceased) represented through
Legal Representatives

21(a) SMT. SANJANA SANJAY GAUNKAR,
Daughter-in-law of late Rama Gaunkar,
Major of age, also a legal guardian
to her minor sons,

21(b) SHRI. MAHESH RAMA GAUNKAR,

21(c) SAISH RAMA GAUNKAR,
All residents of Tanshi, Loliem,
Canaona, Goa.

22. SHRI. JANU NARAYAN GAUNKAR,
(Deleted)

23. SHRI. BALU BALSU GAONKAR,
(Deleted)

24. SHRI. DEU PAIK GAONKAR,
(Since deceased) represented through
Legal Representatives,

24(a) KUM. PRITI NARAYAN GAONKAR,
Grand daughter of late Deu Paik Gaonkar,
Major of age

24(b) SHRI. LAXIMIKANT NARAYAN GAONKAR,

Grand son of late Deu Paik Gaonkar,
Major of age
Both residents of Tanshi, Loliem,
Canacona, Goa.

25. SHRI. SATU GOVIND GAONKAR,
(Since deceased) represented through
Legal Representatives,

25(a) ABOLEM JANU VELIP,
Wife of Brother of late Satu Govind Gaonkar,
Major of age

25(b) BABAY JANU VELIP,
Brother's son of late Satu Govind Gaonkar,
Major of age and his wife,

25(c) SAVITA BABAY VELIP,
Major of age,
All residents of Mahalwado, Poinguinim,
Canacona, Goa.

25(d) SANTU KUST GAONKAR (since deceased)
represented through Legal Representatives

(a) MR. ULHAS KRISHNA GAONKAR,
Son of late Shri. Krishna Kust Gaonkar
22 years

(b) SHRI. RAMAKANT KUST GAONKAR,
Son of Kust Gaonkar
Major of age

(c) SMT. SITA RAMAKANT GAONKAR,
Wife of Shri. Ramakant Kust Gaonkar
Major of age

(d) SHRI. RAMESH KUST GAONKAR,
Son of kust Gaonkar
Major of age

(e) SMT. RESHMA RAMESH GAONKAR,
Wife of Shri. Ramesh Kust Gaonkar
Major of age

(f) SHRI. SUBHASH KUST GAONKAR,
Son of kust Gaonkar

Major of age

(g) SMT. SULAKSHA ALIAS REKHA SUBHASH
GAONKAR,
Wife of Subhash Gaonkar
Major of age

(h) MISS. KAVITA KUST GAONKAR,
Daughter of kust Gaonkar
Major of age

(i) MISS. SAVITA KUST GAONKAR,
Daughter of kust Gaonkar
Major of age
All residents of Santoli, Gaondongrim,
Canacona, Goa

(j) SMT. TULSAWATI TOLU GAONKAR,
Daughter of kust Gaonkar
Major of age, resident of Mahalwada,
Poinguinnim, Canacona, Goa

25(e) KUST GAONKAR,
Major of age, residents of Santoli,
Gaondongrim, Canacona, Goa.

25(f) MOGA LINGU VELIP,
Major of age and her husband,

25(g) LINGU VELIP,
Major of age,
Both residents of Mahalwada,
Poinguinim, Canacona, Goa.

26. SHRI. GOVIND NAGU VELIP,
(Since deceased) represented through
Legal Representatives

26(a) SHRI. NAGU GOVIND VELIP,
Son of late Govind N. Velip
Major of age and his wife

26(b) SMT. SAVITRI NAGU VELIP,
Major of age,

26(c) VISHWANATH GOVIND VELIP,
Son of late Govind N. Velip

Major of age,
All residents of Tanshi, Loliem,
Canacona, Goa.

27. PURISH DEVASTHAN OF TANSHEM,
Major of age, r/o Loliem,
Canacona, Goa.
28. SHRI. KUST NAGU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
29. SMT. SHOBHAVATI JANU GAUNKAR,
Major of age, resident of H. No. not known,
Tanshi, Loliem, Canacona, Goa.
30. SMT. NAVITA NARAYAN GAUNKAR,
major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
31. SMT. SUSHMITA JANU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
32. SMT. SARITA JANU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
33. SMT. SALOJA JANU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
34. SMT. REKHA RAMA VELIP,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
35. SHRI. PREMANAND RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
36. SMT. CHANDRAVATI HARISCHANDRA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
37. SHRI.ANAND RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

38. SHRI. SANJAY RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
39. SHRI.SANDESH RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
40. SHRI. SURESH KUSTA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
41. SMT. SUREKHA SURESH GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona Goa.
42. SHRI. PRAKASH KUSTA GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
43. SMT. PRATIKSHA PRAKASH GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
44. SMT. MANJULA LAXIMAN GAONKAR,
(Since deceased) represented through
Legal Representatives,
- 44(a) SHRI. LAXIMAN PANDU GAONKAR,
Husband of late Manjula Gaonkar,
Major of age,
- 44(b) SHRI. SANDEEP LAXIMAN GAONKAR,
Son of late Manjula Gaonkar,
Major of age,
- 44(c) SHRI. SANDESH LAXIMAN GAONKAR,
Son of late Manjula Gaonkar,
Major of age,
All residents of Padribhat, Nessai,
Salcete, Goa.
45. SMT. SITA RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
46. SMT. RUPAL KUSTA VELIP,
Major of age, resident of H.No. not known,

Tanshi, Loliem, Canacona, Goa.

47. SHRI. MODHU JANU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
48. SMT. PRIYANKA MODHU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
49. SMT. MOGA JANU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
50. SHRI. VAMON SHABA GAONKAR,
(Since deceased) represented through
Legal Representatives,
- 50(a) SMT. PRATIBHA ALIAS SUPHALA SUBHASH GAONKAR,
Daughter of late Shri. Vamon Gaonkar,
Major of age and her husband
- 50(b) SUBHASH PAUTO GAONKAR,
Major of age,
Both residents of Chaudi, Netavali,
Sanguem, Goa
51. SMT. XEUTEM VAMAN GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
52. SHRI. JANU SHABA GAONKAR,
Major of age, resident of H.No. not known,
Xeli, Loliem, Canacona, Goa.
53. SMT. LILAVATI JANU GAONKAR,
(Since deceased) represented through
Legal Representatives,
- 53(a) SHRI. RAMDAS JANU GAONKAR,
Son of late. Smt. Lilavati Janu Gaonkar
Major of age
- 53(b) MISS. MANISHA JANU GAONKAR,
Daughter of late Smt. Lilavati Janu Gaonkar
Major of age

53(c) MISS. SMITA JANU GAUNKAR,
Daughter of late Smt. Lilavati Janu Gaunkar
Major of age

All residents of House No.387, Tanshi,
Loliem, Canacona, Goa.

53(d) SMT. KANISHKA KANTA GAUNKAR,
Daughter of late Smt. Lilavati Janu Gaunkar
Major of age and her husband

53(e) SHRI. KANTA R. GAUNKAR,
Major of age
Both residents of H. No.854/2,
Sollem, Kakoda, Curchorem, Goa.

53(f) SMT. RATWA RAMAKANT VELIP,
Daughter of late Smt. Lilavati Janu Gaunkar
Major of age and her husband

53(g) SHRI. RAMAKANT TUKARAM VELIP,
Major of age
Both residents of H. No.314/1,
Velipwada, Balli, Quepem, Goa

54. SMT. JANQUI VITHOBA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

55. SHRI. BALSU NANUM GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

56. SHRI. SANTOSH BALSU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

57. SHRI. BHIKARO BALU,
(Since deceased) represented through
Legal Representatives,

57(a) SMT. SHILPA PRASHANT VELIP,
Daughter of Bhikaro Gaonkar
Major of age and her husband

57(b) SHRI. PRASHANT VELIP,
Major of age,
Both residents of Mahalwada,

Poinguinim, Goa.

- 57(c) MISS. SUVIDHA BHIKARO GAONKAR,
Daughter of late Bhikaro Gaonkar,
Major of age,
- 57(d) SHRI. VIBHAV BHIKARO GAONKAR,
Son of late Bhikaro Gaonkar,
Major of age,
Both residents of Tanshi, Loliem,
Canacona, Goa.
58. SHRI. PAIK DEU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
59. SMT. VIMAL RATNAKAR VELIP,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
60. SMT. AMITA PAIK GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
61. SMT. KANCHAN PAIK GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
62. SMT. KAVITA PAIK GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
63. SMT. SURANG NARAYAN GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
64. SHRI GANESH DEU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona Goa.
65. SMT. GIRIJA GANESH GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
66. SHRI. PRABHAKAR DEU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

67. SMT. SUSHMA PRABHAKAR GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
68. SMT. DROUPADI MOLU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
69. SMT. MOHINI MOLU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
70. SMT. SEEMA MOLU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
71. SHRI. MODHU BABOI GAUNKAR alias
MADHU BABAI GAONKAR
(Since deceased) represented through
Legal Representatives,
- 71(a) SHRI. RUPESH M GAUNKAR
Son of late Shri. Modhu Baboi Gaunkar
Major of age
- 71(b) SHRI. CHETAN M GAUNKAR
Son of late Shri. Modhu Baboi Gaunkar
Major of age
Both residents of H. No. 1397,
Tanshi, Loliem, Canacona, Goa.
72. SMT. VIDYA MODU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
73. SHRI. ULHAS BABOI GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
74. SMT. CHANDANI ULHAS GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
75. SHRI. JIBLO LAXMAN GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

76. SMT. SHALINI JIBLO GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
77. SHRI. SADANAND LAXIMONA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
78. SMT.SWATI SADANAND GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
79. SHRI. GANESH RAMA GAONKAR,
(Deleted)
80. SMT. DEU GANESH GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
81. SMT. PREMA SURESH DHEKAR,
Major of age, resident of H.No. not known,
Amona, Poinguinim, Canacona, Goa.
82. SMT. MOGA GANESHAM MADKAIKAR,
Major of age, resident of H.No. not known,
Madkai, Ponda, Goa.
83. SMT. LATA MANDYO GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona Goa.
84. SHRI. RAJU MANDYO GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
85. SMT. MANDA MANDYO GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
86. SHRI. JAIWANT GOVIND GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
87. SHRI. RAMESH JAIWANT GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

88. SMT. PRIYA RAMESH GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
89. SHRI. BABU JAIWANT GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
90. SMT. VANITA BABU GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
91. RAVINDRA JAIWANT GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
92. SMT. RIA RAVINDRA GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
93. SHRI. GOVIND JAIWANT GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
94. SMT. PALLAVI JAIWANT GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona Goa.
95. SHRI. CHANDRAKANT GOVIND GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
96. SMT. RUKMINI CHANDRAKANT GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
97. SHRI. RAMA LOXIMONA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
98. SMT. SITA RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
99. SMT.LAXMI RAMA GAUNKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.

100. SHRI. RAMA LAXMAN GAUNKAR,
(Deleted)
101. SHRI, RAMA ESSU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
102. SHRI, NARAYAN JANU GAONKAR,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona, Goa.
103. SMT. UJWALA ARJUN GAONKAR alias
DIKSHA DILIP GAONKAR,
Major of age, resident of H.No. not known,
Tirval, Poinguinim, Canacona, Goa.
104. SHRI. DILIP BHIKRO GAONKAR,
Major of age, resident of H.No. not known,
Tirval, Poinguinim, Canacona, Goa.
105. SMT. MILAN ARJUN GAONKAR,
Major of age, resident of H.No. not known,
Amonem, Poinguinim, Canacona, Goa.
106. SMT. VINANTI ARJUN GAONKAR,
Major of age, resident of H.No. not known,
Amonem, Poinguinim, Canacona, Goa.
107. SHRI. SAGAR ARJUN GAONKAR,
Major of age, resident of H.No. not known,
Amonem, Poinguinim, Canacona, Goa.
108. SMT. VIMAL ALIAS SURAVI DILIP VELIP
(Since deceased) represented through
Legal Representatives,
- 108(a) SMT. DIKSHA DILEEP VELIP
Second wife of Dileep Velip
Major of age, Resident of Vaizavada,
Shrithal, Canacona, Goa.
109. SHRI. DILEEP S. VELIP,
Major of age, resident of H.No. not known,
Vaizawada, Sristah, Canacona, Goa.
110. SMT. SULOCHANA alias LALITA SURESH VELIP,
Major of age, resident of H.No. not known,

Tanshi, Loliem, Canacona Goa.

111. SHRI. SURESH VELIP,
Major of age, resident of H.No. not known,
Tanshi, Loliem, Canacona Goa.
 112. SHRI. ARJUN GONSU GAONKAR,
Major of age, resident of H.No. not known,
Amonem, Poinguinim, Canacona, Goa.
 113. SMT. VEDANTI VISHNU GAONKAR alias
GANGA JANU GAONKAR alias
VIDHANTI VISHNU GAONKAR,
Major of age,
 114. SHRI. VISHNU CHANDRU GAONKAR,
Major of age,
Both r/o H.No. not known,
Bali, Cuncolim, Quepem, Goa.
 115. SMT. PANCHU SHABA VELIP,
Major of age, resident of H.No. not known,
Mahalwada, Poinguinim, Canacona, Goa.
 116. SHRI. SHABA BHUDU VELIP,
Major of age, resident of H.No. not known,
Mahalwada, Poinguinim, Canacona Goa.
 117. SMT. GUNU PURSO VELIP,
Major of age, resident of H.No. not known,
Mahalwada, Poinguinim, Canacona, Goa.
 118. Deputy Collector and SDO,
Canacona, South Goa, Goa.
 119. The Mamlatdar,
Canacona, South Goa, Goa.
 120. The Administrative Tribunal,
3rd Floor, Dr. Vaidya Hospital Bldg,
Panaji, Goa.
- Respondents

Shri Sudesh Usgaonkar, Advocate for the Petitioner.
Shri Shivan Desai, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 6th OCTOBER, 2017

Pronounced on : 11th JANUARY, 2018

JUDGMENT :

1. Shri Sudesh Usgaonkar, learned Advocate came to be heard on behalf of the petitioner and Shri Shivan Desai, learned Advocate on behalf of the respondents.

2. Rule. Heard forthwith with the consent of the learned Counsels. The learned Counsel appearing for the respondents waives service.

3. This petition takes exception to the order dated 25/02/2016 passed by the Administrative Tribunal disposing the petitioner's appeal against the order overruling the petitioner's objection to the partition and the final order passed by the Deputy Collector and Sub-Divisional Officer confirming the partition of the property applied for by the respondents no.1 in respect of the Survey No.328/1 of Village Loliem. The petitioner had filed the appeal under the Land Revenue Code, 1968 (Act for short hereinafter) bearing no.49/13 assailing the order dated 25/07/2013 and the other appeal no.3/2014 against the confirmation and final order both dated 4/12/2013 which the Appellate Court disposed off by

the common impugned order. The respondent no.1 had filed an application dated 28/03/2011 before the Deputy Collector and SDO Canacona for partition of the portion of the property admeasuring 10,09,877 sq. mts. forming a part of the Survey No.328/1 purchased by them by three Deeds of Sale dated 19/06/2006 and 20/06/2006 and produced the Sale Deeds, the Record of Rights, Form I and XIV and the plan of the entire property surveyed under no.328/1 showing the portion of the property partitioned therefrom. The respondents no.1 had impleaded only its vendors but did not implead all the co-owners whose names were recorded in the occupants column including the name of the late father of the petitioner. The Deputy Collector and SDO had issued notices to all the co-holders of the survey No.328/1 in terms of the Rules under Section 61 of the Act and one such notice was issued to the late father of the petitioner who appeared and sought time to file objections in which he disputed the title of the respondents no.1 on the premise that the property purchased by the respondents no.1 exclusively belonged to him and others and that the Sale Deeds executed in favour of the respondents no.1 were the subject matter of challenge in a suit for declaration of title instituted against the respondents no.1 being the Regular Civil Suit No.24/2010 before the Court of the CJJD, Canacona.

4. The Deputy Collector and SDO overruled the objections of the

petitioner and allowed the partition directing the Inspector of Survey and Land Records, Quepem to partition the said area from the Survey No.328/1 in accordance with the sketch furnished by the respondents no.1. The petitioner was not impleaded as a party in the proceedings before the Deputy Collector and SDO but on receipt of the notice issued to his late father, the petitioner appeared as his legal representative and filed his objection informing the Court about the death of his father. The Court had refused to consider the objections on the ground of non-production of material to establish that the property claimed by the respondents no.1 was the same as that claimed by the petitioner. He had challenged the order of the Deputy Collector before the Administrative Tribunal which granted an ex-parte stay on 3/10/2013. The respondents no.1 challenged the order in Writ Petition No.719/2013 on the ground that the interim relief of stay was granted without hearing him. This Court had partly allowed the petition vide its order dated 27/11/2013 on the limited point that the respondents no.1 were not heard before passing the order of stay and as such quashed and set aside the order dated 3/10/2013 directing the Administrative Tribunal to dispose off the Miscellaneous Application after hearing the respondents no.1 in accordance with law.

5. The Deputy Collector and SDO on hearing the parties

confirmed the partition and closed the proceedings. The petitioner challenged the order dated 4/12/2013 confirming the partition and rejecting the application to produce documents in the appeal no.3/2014 before the Appellate Court. The Appellate Court disposed off the appeal no.49/2013 and 3/2014 by the common judgment dated 25/02/2016. The Appellate Court erred in law in not considering that the order dated 25/07/2013 and 4/12/2013 passed by the Deputy Collector and SDO were patently without jurisdiction. Hence, the petition invoking the jurisdiction of this Court to call for the records and to set aside the common order dated 25/02/2016.

6. Shri Sudesh Usgaonkar, learned Advocate for the petitioner submitted at the outset on a plain reading of Section 61 of the Code as to whether the Collector could grant partition when the property itself was in dispute. He specifically adverted to the proviso to Section 61 of the Code which bars partition when the title to the property is in dispute. His next contention was that the jurisdiction in the Collector in terms of Section 61 of the Code was by implication on consent. The survey records of the property 328/1 showed that there were several co-holders of the said property and that it admeasured 28,91,500 sq. mts. from which some co-holders alone had sold 10lakhs sq. mts. to the respondents no.1. The respondents no.1 had moved an application

for partition of the said area but had failed to account how they were entitled to the partition of the said area when there were 10 co-holders of the said land. The Deputy Collector had issued notices to all the co-holders as per the survey records and the petitioner had filed his reply raising objections. Hence, there was no basis for the Deputy Collector to exercise his jurisdiction under Section 61 of the Act.

7. Shri Sudesh Usgaonkar, learned Advocate for the petitioner adverted to the grounds raised in the reply and the written statement and submitted that an inquiry had to be conducted by the Deputy Collector in view of such objections raised and that the Deputy Collector had no powers to examine the title in terms of Section 61 of the Act read with the proviso thereto. He next adverted to the appeal filed before the Administrative Tribunal and the order passed by this Court dated 25/02/2014 and submitted that no point was formulated in the impugned order whether it was contrary to law. He relied in a full Bench judgment in **Nagjiram V/s. Mangilal & Ors.** [AIR 1977 MP 8] and submitted that when the Appellate Court found that the petitioner was not impleaded, he should have remanded the file to the Deputy Collector for impleadment. There was no basis in the so called pragmatic view adopted by the Administrative Tribunal when it had acted contrary to the proviso to Section 61 of the Act. It was a creature of the

statute and it had overreached the mandate of Section 61 proviso and hence the impugned order was liable to be quashed and set aside.

8. Shri Shivan Desai, learned Advocate for the respondent No.1 submitted that there was no prejudice caused to the petitioner by the impugned order. The name of the petitioner was neither recorded in the survey records Form I and XIV nor had the petitioner challenged the mutation in the survey records in the name of the respondents no.1 which order had attained finality. The petitioner had also not challenged the Sale Deeds executed in favour of the respondents no.1 nor raised any title to the property in question in terms of Section 61(2) proviso. He relied in **Commissioner of Income Tax (Central) V/s. B.N. Bhattacharjee & Anr.** [(1979) 4 SCC 121] on the aspect of the interpretation and then adverted to the Goa, Daman and Diu Land Revenue (Partition of Holdings) Rules, 1969. The plaintiffs in the suit were not co-holders as their names were not recorded in the survey records. The petitioner was claiming right to inheritance through the grandfather and whose name was not recorded in the survey records. There were plans annexed to each of the Sale Deeds identifying the property sold to the respondents no.1 and on that basis he contended that the full bench judgment in **Nagjiram** (supra) was clearly distinguishable and did not apply to the facts of

the case and on his part placed reliance in **National Insurance Co. Ltd. V/s. Laxmi Narain Dhut** [AIR 2007 SCC 1563].

9. Shri Shivan Desai, learned Advocate for the respondent No.1 read through Section 61(2) of the Act and contended that a grammatical interpretation was sought to be given to it defeating the purpose of such a provision. The contention on behalf of the petitioner that Section 61(2) of the Act was a consent jurisdiction was fallacious and doing violence to the section. He next contended that there was neither any plan nor any area claimed or any document of title produced by him. Therefore no question arose of title being raised by the petitioner. The order passed by the Administrative Tribunal was reasonable and equitable. Besides, mutation was carried out in terms of Section 96 of the Code in favour of the respondents no.1 and there was no challenge to it at the instance of the petitioner. No prejudice too was spelt out by the petitioners and in that context he relied in **Mohd. Yunus V/s. Mohd. Mustaqim & Ors.** [AIR 1984 SC 38]. He further placed reliance in **Shalini Shyam Shetty & Anr. V/s. Rajendra Shankar Patil** [(2010) 8 SCC 329] and **Radhey Shyam & Anr. V/s. Chhabi Nath & Ors.** [(2015) 5 SCC 423] to canvass his contention that the power of superintendence in terms of Article 227 of the Constitution was not to be exercised lightly but only in exceptional circumstances.

10. Shri Sudesh Usgaonkar, learned Advocate for the petitioner in reply contended that the petitioner was a co-holder in terms of the survey records Form I and XIV. In any event, the Deputy Collector could not sit in adjudication in respect of the title disputes particularly when objections were filed by the petitioner as a co-holder. The Land Revenue Code was a fiscal statute and had to be interpreted in the same manner. He clearly distinguished the judgment in **Nagjiram** (supra), and submitted that the Full Bench judgment squarely applied to the case of the petitioner while the judgment in **Laxmi Narain Dhut** (supra) did not assist the respondents no.1 on the matter of interpretation. He also squarely distinguished the judgment in **Shalini and Radhey Sham** (supra) and pressed for the grant of the petition. i would consider their submissions, the judgments relied upon supra, the proviso to Section 61 of the Code and materially the power of superintendence of this Court in terms of Article 227 of the Constitution of India and decided the matter appropriately.

11. Chapter V of the Goa Daman and Diu Land Revenue Code 1968 ('the Act', for short hereinafter) deals with the various facets of Survey. Section 55 deals with the Revenue survey, settlement and terms of settlement, Section 56 provides that the Government to direct revenue survey of any local area with a view to the settlement of the land revenue and to the preparation of the record

of rights connected therewith or the revision of any existing settlement or of record of rights. Section 57 requires the Survey Officer by general notice or by summons, suitable service from holders of land etc. to take part in any such survey or a survey under section 62 to require by general notice or such by summons the attendance of holders of land and of all persons interested therein, in person, or by legally constituted agents remain present for the stated purpose. Section 58 requires assistance to be given by holders and others in measurement or classification of lands. Section 60 in particular provides that the area and the assessment of survey numbers and sub-divisions of survey numbers shall be entered in such records as may be maintained under the rules made by the Government in that behalf.

12. Section 61 is the material section which deals with the partition and opens with sub-section 1 reading thus "subject to the provisions of any law for the time being in force for the prevention of fragmentation and consolidation of holdings, a holding may be partitioned on the decree of a civil court or on an application of co-holders in the manner hereinafter prescribed. Sub-section 2 reads that if in any holding there is more than one co-holder, any such co-holder may apply to the Collector for a partition of his share in the holding: provided that, **where any question as to title is raised**, no such partition shall be made until such question has

been decided by a civil suit. Sub-section 3 reads that subject to the provisions of sub-section (4), the Collector may, after hearing the co-holders, divide the holding and apportion the assessment of the holding in accordance with the rules made by the Government under this Code.” In other words, partition is possible provided there is no dispute as to any title thereto and from the proviso to sub-section 2 which clearly prohibits any partition being made where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit. In other words, as rightly contended by Shri Usgaonkar, learned Advocate for the petitioner that whenever any property is in dispute and question as to title is raised, it is for the Civil Court alone to decide the title and till then no partition shall be made by the Collector. Further in terms of the proviso, partition is barred whenever the title to the property is in dispute and therefore the jurisdiction in the Collector in terms of sub-section 2 of Section 61 of the Act is by implication of consent as contended by Shri Usgaonkar. Therefore, the question which would arise for determination in this petition is whether the Collector could have granted partition in terms of Section 61 of the Act when the title to the property was in dispute.

13. Shri Usgaonkar, learned Advocate invited attention to the survey records of the suit property 328/1 where it was shown that

there were about 10 persons whose names were listed as the occupants of the property and which was admeasuring about 28,91,500 sq.mts. Shri Usgaonkar, learned Advocate invited attention to the name of late Janardan Bhat recorded in the Survey Records being the grandfather of the petitioner who had raised the claim to the said property from which an area of about 10 lakhs sq.mts. was sold by some co-holders to the respondents no.1 and thereupon they had applied for partition of the said property pursuant to their application dated 28/03/2011. The respondents No.1 had set out in their application that the property bearing Survey No.328/1 known as Tonosso was admeasuring 28,95,100 sq.mts. bearing distinct registration number and Matriz number, with survey areas which had been purchased from the said land by different Sale Deeds dated 20/06/2006, 19/06/2006 and 20/06/2006 and that on the basis of the Sale Deeds and survey records alongwith the plan of the entire property, they were seeking the partition of the sale land and for allotment of a single survey number to them.

14. The respondents No.1 had not accounted how they could seek for the separation of the sale area when admittedly there were 10 co-holders to the said property. The petitioner had filed his reply before the Deputy Collector dated 18/04/2011 and raised objections that one Ramkrishna Bhat was one of the legal heirs of

Janardan Bhat, since deceased, and whose name was recorded in the Survey records of 328/1 leaving behind the petitioner and other heirs. He had taken a plea that the property 'Onmoxi' belonged to his family in which the name of his late grandfather Nilkant was enrolled in the Matriz records and which was partly surveyed under number 323/7 and the disputed property 328/1 of village Loliem. He had in his objection taken a further plea that the respondents No.1 had no right to the land which exclusively belonged to his family, that the subject matter of the land was in dispute and the Sale Deed executed in favour of the respondents no.1 had been challenged before the Court of Civil Judge, Junior Division, Canacona in Regular Civil Suit No.24/2010. On that premise he had opposed the partition of the property unless and until the land was separated through proper partition proceedings and pressed for its dismissal. These objections raised by the petitioners were apparently suppressed before the Collector as per the contention of Shri Usgaonkar and who had therefore no basis to exercise his jurisdiction in terms of Section 61(2) of the Code.

15. Shri Usgaonkar, learned Advocate for the petitioner referred to the proceedings in the Civil Suit No.24/2010 wherein the respondents no.1 were the party defendants No.91 to the suit amongst other co-owners being the widow of Janardan, her son Ramkrishna amongst other co-owners. The plaintiff in that suit had

clearly set out that the property situated at Loliem Canacona bearing distinct land Registration and Matriz numbers were surveyed under nos.323/7 and 328/1 with distinct boundaries and that the property inscribed was under No.2871 in favour of Nilconta Boto and others who had expired leaving three sons Janardan, Vidhyadhar and Raghunath Bhat. The said plaintiffs had also enumerated the details of the other co-owners and later spelt out that by Deed dated 19/06/2006, the defendants No. 1 to 90 had sold to the defendants No.91 i.e. the respondents No.1 herein an area of 7,24,827 sq.mts. out of the total area of 28,95,100 sq.mts of the survey No. 328/1. By another Deed dated 20/06/2006 the same defendants had sold to the respondents No.1 an area of 2,55,050 sq.mts. of the survey No. 328/1 and by another Deed of the same date the very same defendants No.1 to 90 sold to the defendant No.91 i.e. the respondent No.1 herein an areas of 30,000 sq.mts. It was the case of the plaintiffs in that suit that they came to know about the sale only when the notice of mutation was published in the local daily and resisted which was decided against them and an appeal was preferred by the plaintiff No.2 before the Sub- Divisional Officer and the same was pending disposal. It was their case that on account of the work started by the respondents No.1 of fencing the property that they were constrained to file the suit for a declaration that they were the owners, for a declaration that the Sale Deeds were null and void

and for injunction.

16. The present respondents No.1 had filed an additional reply to the application dated 09/06/2011 in which they claimed that no document was produced on record by the legal heir of the respondents No.93 in the suit to establish that the signatory was the legal heir of the respondents No.93. The objector had not produced any document to show that he or his family had any rights in the property purchased by the respondents No.1 nor had he produced any documents to show that the Land Registration No.6580 and Matriz No.648 corresponded to the property purchased by the respondents No.1. The Civil Suit No. 24/2010 had no relevance or bearing on the proceedings before the Deputy Collector nor was there any basis to conclude that the partition proceedings could not go ahead in view of the filing of the suit. They had purchased the property by way of three Sale Deeds and their names were reflected in the Mutation Records and therefore the objection raised by the legal heirs of the respondent No.93 had to be dismissed. The respondents No.1 had taken a plea in the written statement to the Suit No. 99/2007 as the Defendant No.91 therein that the suit did not disclose any cause of action against them, that the plaintiffs in the suit had failed to establish their relationship with Nilkant Bhat and his wife Anandi and hence had no locus standi to file the suit.

17. The respondents No.1 raised a dispute on the nexus of the plaintiff with Nilkant Bhat and pointed that it was incumbent on the Collector to conduct an inquiry. Besides, the petitioner in partition case before the Deputy Collector had raised an objection to the partition proceedings and sought to produce various documents on record. Quite on the contrary, the respondents No.1 in these proceedings had not produced any documents in the partition proceedings. In any event, the Collector in exercise of his power under Section 61 of the Act had no power to examine title considering the proviso to sub-section 2 thereof. The Deputy Collector by his Judgment dated 25/07/2013 had recorded at paragraph 4 the case of the petitioner as the legal heir of Janardhan Bhat, that the said Janardan had expired in 1976 leaving behind Ramkrishna, Atchut alias Premdas, Anusuya alias Bhagirati, Sufala, Santosh, Sandeep and Sulabha as his heirs. The land 'Onmoxi' belonged to their family which was enrolled in the Matriz records of Canacona under 648 in the name of late Nilkant Bhat, surveyed under No.323/7 and partly 328/1 of village Loliem and that the present respondents No.1 had wrongly included the land in the Sale Deeds and further that the subject matter of the land was in dispute and the Sale Deeds executed in their favour was under challenge before the Civil Court, Canacona.

18. The learned Deputy Collector had then heard the parties and

recorded a finding that the legal heir of the respondent No.4 Janardan Bhat had not produced any document on record to prove that the signatory was the legal heir of the respondents No.4 and they had also not produced any document on record to establish that he or his family had any right in the property purchased by the present respondents No.1 and/or that no document was produced to establish that the Land Registration No.6580 and Matiz No.648 corresponded to the property purchased by the applicants i.e. the present respondents No.1. The learned Deputy Collector after recording its finding hastily concluded that in his opinion the application for partition had to be allowed, objections to implead the intervenors as parties had no basis, filing of the Civil Suit did not prevent the partition to be carried out and in that view of the matter allowed the partition and directed the Inspector of Survey and Land Records, Quepem to partition an area of 10,09,877 sq.mts. as belonging to the respondents No.1 from the survey No.328/1 of Loliem village. It is apparent from the said judgment that the Deputy Collector had not held any inquiry and concluded in favour of the respondents No.1 which was in patent contravention of Section 61(2) proviso of the Act.

19. In **Nagjiram** (supra), a full bench of the Madhya Pradesh High Court held that when there are more Bhumiswamis than one to any holding (which has been assessed for the purpose of

agriculture) every one of them has the right to apply to the Tahsildar for a partition of his share. The proviso to Section 178(1) of the Madhya Pradesh Land Revenue Code, 1959, was attracted as soon as any question of title was raised. The Revenue authority had no jurisdiction to enter into any such question, whether the question of title raised was genuine or bogus, strong or weak, bonafide or malafide. When a question of title is raised, partition shall not be made and the Revenue Authority shall stay its hands to await the decision of the Civil Court. The Revenue Authority had no jurisdiction to give any direction to any particular party to institute a civil suit, much less to fix any time for that purpose. The application for partition will in such case remain in abeyance until the question of title is decided. The Revenue Authority may for statistical purpose consign the proceeding to the record room to be recalled when the decision of the Civil Court is received. The application for partition cannot be dismissed. When the decision of the Civil Court is received, the Revenue Authorities shall proceed to make the partition having regard to the decision of the Civil Court.

20. In **Nagjiram** (supra), Mangilal, respondent, made an application under Section 178 of the Code to the Naib-Tahsildar for partition of land on the allegations that it was a joint holding (No.33) consisting of survey Nos.95, 107 and 199 of himself and Nagjiram in Bhumiswami rights. Although before consolidation

proceedings there had been a private partition, yet no formal partition had been effected. He, therefore, claimed a partition by metes and bounds according to the procedure prescribed by law. Nagjiram resisted the said application contending that he was in long possession and that Mangilal has no right to partition. The Naib-Tahsildar found that there was a question of title raised, which had to be decided by the Civil Court and directed the applicant, Mangilal, to get the dispute determined by the Civil Court. Stage by stage the matter reached the Board of Revenue, which directed Nagjiram to institute a civil suit within three months from the date of that order and go on seeking extension of time from the Tahsildar. In case he did not institute the civil suit, the Tahsildar would proceed to effect the partition. Aggrieved by the order of the Board of Revenue, Nagjiram filed the Writ Petition and the matter was referred to the Full Bench.

21. In **Nagjiram** (supra), the Full Bench found on a reading of Section 178 of the M.P. Land Revenue Code, 1959, that any of the Bhumiswami of any holding (which has been assessed for the purpose of agriculture) may apply to the Tahsildar for a partition of his share, that the proviso was as plain and unambiguous as it could be. Its wording, meaning and intention are all plain and simple and the proviso could be analysed thus, (a) the proviso is attracted as soon as any question of title is raised. (b) when a

question of title is raised, the Revenue authorities shall not proceed with partition, and (c) the Revenue authorities shall proceed with partition when such question of title, which is raised, has been decided by a civil suit. To put it differently, Section 178(1) of the Code alongwith its proviso means that it will operate effectively when there is no dispute of title: otherwise it will operate only when the dispute of title is decided by the civil suit. On an ultimate analysis it was held that the Revenue Authorities had no jurisdiction to proceed with the partition proceedings when a question of title is raised, or to dismiss the proceeding when a question of title is raised, or to give any direction to any party to institute a civil suit, much less to fix any time for that purpose. The provision of Section 178 of the M.P. Land Revenue Code is pari passu with Section 61(2) of the Act. This judgment as rightly contended by Shri Usgaonkar would squarely apply to the facts of this case without any reservation unlike the contention of Shri Shivan Desai, learned Advocate for the respondent No.1 that it is clearly distinguishable.

22. **Shalini Shyam Shetty** (supra), on a consideration of various judgments including that in **Surya Dev Rai vs Ram Chander Rai and others** [(2003) 6 SCC 675] culled out the following principles on the exercise of the High Court jurisdiction under Article 227 of the Constitution

a. A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

b. In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

c. High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

d. The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

e. According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

f. In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

g. Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

h. In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

i. High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar v/s. Union of India & others, [(1997) 3 SCC 261] and therefore abridgement by a Constitutional amendment

is also very doubtful.

j. It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

k. The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

l. On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

m. The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

n. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

o. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

23. In **Commissioner of Income Tax (Central)** (supra), it was held that Court should stick to the literal manner in the absence of any alternative manner to go beyond the strict grammatical construction when a new ambiguous provision is to be construed.

24. Rule 2 of the Goa, Daman and Diu Land Revenue (Partition of Holdings) Rules, 1969 contemplates an application by a co-holder for partition of his share in a holding under sub-section(1) of Section 61 is required to contain the area of each field constituting the holding and its survey number, the tenure of the holding, the land revenue of the holdings, the names and addresses of the co-holders and the extent of their shares and the application shall be accompanied by a copy of entries in the record of rights. Rule 7

contemplates the procedure before confirmation of partition and reads thus : After the partition has been completed, the Collector shall hear any objections which the parties may make, and shall either amend or confirm the partition. The partition shall take effect from the commencement of the agricultural year next following the date of such amendment or confirmation of the partition. A reading of these two Rules alongwith Rule 5(ii) of the Record of Rights rules cannot in any manner take away the limitation contained in Section 61(2) proviso and it would follow that the Collector would have to lay off his hands from the partition proceedings whenever any dispute as to title is raised in such proceedings before him.

25. In **Mohd. Yunus** (supra), the Hon'ble Apex Court held at paragraph 7 as below

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In

exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”

26. In **Radhey Sham** (supra), the Hon'ble Apex Court held that under Article 227 of the Constitution, the High Court did not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

27. The Deputy Collector had not held any inquiry while dealing with the application of the respondents no.1 under Section 61 of the Act. There was patent contravention of Section 61(2) proviso even though there was a dispute of title. The learned Administrative Tribunal despite recording the submissions of the learned Advocate for the Petitioner that the Deputy Collector had not considered that the partition proceedings could not take place when there was a Civil Suit pending for the adjudication of rights of

the parties yet did not formulate any point whether the impugned order was contrary to law. The learned Administrative Tribunal reproduced the contents of Section 61 of the Act who failed to give due effect to the proviso to sub-section 2 thereof which clearly provided that where any question as to title was raised, no such partition can be made until such question had been decided by a Civil Suit. At one time, the learned Tribunal observed that the learned Deputy Collector had not discussed and considered the contentions raised by the appellant and had refused to take on record the documents which was sought to be produced, observed that in terms of the proviso to Section 61(2) of the Act no partition could be made until the question of title was decided by the Civil Court and yet in his contorted opinion held that not only a pragmatic but practical and realistic approach was required to be adopted in the interest of justice and partly allowed the appeal.

28. The Administrative Tribunal clearly went contrary to the mandate of the proviso to Section 61(2) of the Act in its approach to adopt a "pragmatic view" and thereby violated the essence of the proviso to Section 61(2) of the Act. The Administrative Tribunal which is a creature of the statute overruled the mandate of Section 61(2) proviso and passed the impugned judgment which is liable for interference in this petition. The contention of Shri Dessai, learned Advocate for the respondents that the petitioner would not

suffer any prejudice by the impugned order when his name was not recorded in the survey records Form I and XIV is untenable nor is there any basis in his contention that the petitioner had not raised any title to the land in terms of Section 61(2) proviso. The petitioner in any event was claiming inheritance through his grandfather whose name was recorded in the survey records though his name was not recorded therein and which cannot defeat his claim to raise a title to the property in question. Another point canvassed by Shri Desai, learned Advocate for the respondents No.1 that there were plans attached to each Sale Deed identifying the properties sold to the Respondent No.1 and on the basis of which mutation was sought again cannot buttress his case for partition or to justify the impugned order when admittedly the parcels sold to the Respondent No.1 by some of the co-owners was a fraction of a larger property admeasuring more than 28 lakhs sq.mts. Unlike 10 lakhs sq.mts. approximately sold to the respondents No.1. Once a dispute was raised to the title, the Deputy Collector had to lay off his hands to the partition and could not order the partition on the specious premise that the area purchased by the respondent No.1 from the larger property stood identified on the basis of the plans annexed to the Deed. The learned Administrative Tribunal too was in error to appreciate the Judgment passed by the learned Deputy Collector and had clearly whittled down the effect of the proviso to the Section 61(2) of the

Act. Moreover, the Judgment in **Nagjiram** (supra) rendered by the full bench of the Madhya Pradesh High Court is in pari materia to the provisions contained in Section 61 of the Act and which is clearly applicable to the case at hand. On that premise, the learned Administrative Tribunal committed illegality in passing the impugned Judgment which after considering the principles laid down in **Shalini Shyam Shetty** (supra) and **Radhey Shyam** (supra) does justify an interference with the impugned order in exercise of the writ jurisdiction under Article 227 of the Constitution of India.

29. In the result, i pass the following

O R D E R

1. The impugned order is quashed and set aside pursuant to which the learned Administrative Tribunal had confirmed the partition and issued directions for the correction of the survey records in question.
2. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.